



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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2 TO: The Commission
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4 FROM: Lisa J. Stevenson
5 Acting General Counsel
6
7 Kathleen M. Guith
8 Associate General Counsel for Enforcement
9
10 BY: Jin Lee *JL*
11 Acting Assistant General Counsel
12
13 Shanna M. Reulbach *SMR*
14 Attorney
15
16 SUBJECT: MUR 7041 (United Association of Journeymen and Apprentices of the Plumbing
17 and Pipefitting Industry of the United States and Canada Local 469)
18 Pre-Probable Cause Conciliation and Case Closing Memorandum
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20 **I. Introduction**

21 This matter involves allegations that the United Association of Journeymen and
22 Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 469
23 ("Local 469") and its separate segregated fund, United Association of Plumbers and Pipefitters
24 Local 469 Federal Political Action Committee and Aaron Butler in his official capacity as
25 treasurer ("Local 469 Federal PAC"), improperly solicited Local 469's members in violation of
26 the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 9, 2017, the
27 Commission found reason to believe that Local 469 and Local 469 Federal PAC violated
28 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-(5) through the use of a
29 deficient payroll authorization form, and 52 U.S.C. § 30118(b)(3)(A) and (C) and 11 C.F.R.
30 § 114.5(a)(1)-(2) and (4) by publicizing a list of non-contributors while making verbal
31 solicitations.¹ The Commission authorized pre-probable cause conciliation and approved a
32 conciliation agreement.² As discussed below, we have completed our negotiations with Local
33 469 and Local 469 Federal PAC and recommend that the Commission accept the signed
34 agreement.

¹ Cert. at 1 (Feb. 10, 2017). The Commission also dismissed the allegation that Local 469's state committee, Arizona Pipe Trades 469, violated 52 U.S.C. § 30103 and 11 C.F.R. § 102.1(c) by failing to register as a political committee. *Id.*

² *Id.* at 2.

1 In addition, at the time it made its reason to believe findings, the Commission decided to
2 take no action at that time against three individual respondents: Aaron Butler, the current
3 business manager of Local 469 and the current treasurer of Local 469 Federal PAC; Phil
4 McNally, the former business manager of Local 469; and Israel G. Torres, Local 469's attorney.³
5 According to the Complaint, these individual respondents participated in the improper
6 solicitations with knowledge that their actions were not lawful and thus knowingly and willfully
7 violated the Act.⁴ For the reasons discussed below, we recommend that the Commission dismiss
8 the allegations that Butler, McNally, and Torres violated 52 U.S.C. § 30118(b)(3)(C) and 11
9 C.F.R. § 114.5(a)(2) and (4)-(5) and close the file.

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26 Thus, we recommend that the Commission
27 accept the signed agreement.

³ *Id.*; Compl. at 2-3 (Apr. 13, 2016).

⁴ *See* Compl. at 9, 12, 17.

III. Individual Respondents

Although not addressed in detail in the First General Counsel's Report, the Complaint alleged that Butler, McNally, and Torres were individually liable for the coercive nature of Local 469's and Local 469 Federal PAC's solicitations. Specifically, the Complaint argued that McNally authorized the use of the deficient payroll authorization form and collected the unlawfully-solicited funds that resulted from its use.⁸ He also maintained and published the non-contributors list where it would be visible during union meetings and Local 469 Federal PAC solicitations.⁹ In addition, the Complaint alleged that Butler, when he took over as Local 469 business manager, continued to use the same form and publish the non-contributors list.¹⁰ Furthermore, according to the Complaint, Torres was culpable because he counseled Butler and McNally that these practices were lawful, and on at least one occasion he solicited money for Local 469 Federal PAC with the non-contributors list in sight.¹¹ The Complaint alleges that because Butler, McNally, and Torres knew that their conduct was unlawful, they knowingly and willfully violated the Act.¹²

The Act states that it is unlawful for "any person" soliciting an employee for a contribution to a separate segregated fund to fail to inform the employee of his right to refuse without reprisal.¹³ Thus, individuals may be liable in their personal capacity for improperly coercive solicitations. A violation of the Act is knowing and willful when the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."¹⁴

Here, Butler, McNally, and Torres each appear to have participated in some way in carrying out the unlawful solicitations. However, we recommend dismissing the allegations against them. The Commission typically does not pursue an individual officer for failing to

⁸ Compl. at 7, 9.

⁹ *Id.* at 12.

¹⁰ *Id.* at 9, 12.

¹¹ *Id.* at 16-17. In addition, the Complaint alleged that Torres perpetrated a "dark money scheme" in which he transferred funds from contributions, which were illegally coerced, into PACs controlled by Torres. Because the allegation did not appear to state a violation of the Act, we made no recommendation as to that allegation. See First Gen. Counsel's Rpt. at 2 n.2 (Sept. 30, 2016).

¹² See Compl. at 9, 12, 17.

¹³ 52 U.S.C. § 30118(b)(3)(C).

¹⁴ 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

provide the required notices for the solicitation of contributions to a separate segregated fund,¹⁵ and the Commission is already pursuing Local 469 and Local 469 PAC for the same violations. Furthermore, the Commission did not find that Local 469's and Local 469 PAC's violations of the Act were knowing and willful,¹⁶ and we discovered no new evidence during our negotiations that is relevant to Butler's, McNally's, and Torres's personal liability. Under the circumstances, we do not recommend proceeding against Butler, McNally, and Torres in their individual capacities, and we therefore recommend that the Commission exercise its prosecutorial discretion and dismiss the 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-(5) violations as to Butler, McNally, and Torres and close the file.¹⁷

IV. Recommendations

1. Accept the attached signed conciliation agreement with the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 469 and the United Association of Plumbers and Pipefitters Local 469 Federal Political Action Committee and Aaron Butler in his official capacity as treasurer;
2. Dismiss the allegations that Aaron Butler violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-(5);
3. Dismiss the allegations that Phil McNally violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-(5);
4. Dismiss the allegations that Israel G. Torres violated 52 U.S.C. § 30118(b)(3)(C) and 11 C.F.R. § 114.5(a)(2) and (4)-(5);
5. Approve the appropriate letters; and
6. Close the file.

¹⁵ See MUR 6621 (American Hotel & Lodging Association) (dismissing the allegations against a corporate officer who participated in improper solicitations to a separate segregated fund because the Commission was already pursuing the trade association and its separate segregated fund for the same improper solicitations and because, at that time, the Commission had never pursued an officer in his individual capacity for improper solicitations to a separate segregated fund); see also MUR 6812 (Penn Line Services, Inc.) (holding no officer liable for improperly soliciting contributions to a separate segregated fund); MUR 5681 (High Point Regional Association of Realtors) (same); MUR 6129 (ARDA-ROC PAC) (same). But see ADR 480 (Sumter Electric Cooperative, Inc.) (referring a corporate officer to alternative dispute resolution for coercively soliciting contributions to a separate segregated fund, resulting in a negotiated settlement imposing personal liability); MUR 5437 (SEIU Local 250) (finding reason to believe that union officers violated section 30118(b)(3), but taking no further action when the investigation found insufficient evidence that the officers used coercion while soliciting contributions to the separate segregated fund).

¹⁶ Cert. at 1.

¹⁷ See *Heckler v. Chaney*, 470 U.S. 821 (1985).